APPENDIX A

Norris-LaGuardia Act, 29 U. S. C. §104

"No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are hereinafter defined) from doing, whether singly or in concert, any of the following acts:

* * *

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in Section 3 of this Act."

Norris-LaGuardia Act, 29 U. S. C. §113

"When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is * * * (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the

case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

* * *

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

Railway Labor Act, 45 U. S. C. §152 Tenth

"*Tenth. Violations—Prosecutions and penalties.* The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States [United States attorney] to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States all necessary proceedings for

the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent."

APPENDIX B

Order

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,060 September Term, 1963.

Civ. 1544-63

Air Line Pilots Association, International, *et al.*,
Appellants,

v.

National Mediation Board, *et al.*,
Appellees.

Before:

Wilbur K. Miller, Fahy and McGowan, Circuit Judges, in Chambers:

On consideration of appellants' motion for a stay enjoining the tabulation of ballots, and for an order directing the impounding of ballots, it is

ORDERED by the Court that appellants' aforesaid motion is hereby denied.

Per Curiam.

Dated: Nov 6, 1963

APPENDIX C

Affidavit of Nicholas J. O'Connell

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

63 Civ. 585

CHARLES H. RUBY, as President of the AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, and unincorporated association,

Plaintiffs,

against

AMERICAN AIRLINES, INC.,

Defendant,

and

NICHOLAS J. O'CONNELL, JR., individually and as Chairman of the Master Executive Council of the pilots in the service of AMERICAN AIRLINES, INC., and the Negotiating Committee of said pilots, consisting of RICHARD LYONS, ROBERT T. GUBA, JOSEPH O'CONNELL, JR., ex officio,

Additional Defendants,

and

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Intervenors.

State of New York,
County of New York, } ss.:

NICHOLAS J. O'CONNELL, being duly sworn, deposes and says:

1. This affidavit is being submitted in order to report and document to the Court certain events which crucially

affect the issues in the pending litigation. It is also submitted in support of a motion for dismissal of the complaints against the Additional Defendants; this motion is to be made to the Court tomorrow.

Allied Pilots Association's Proof of Majority Status

2. On Friday, April 12, 1963, the Allied Pilots Association sent, through the United States mails, ballots in the form of authorization cards to the pilots in the employ of American Airlines. These "cards," a copy of which is attached hereto and made a part hereof as Exhibit "A," permitted the pilot receiving it to sign his name and thereby "authorize the Allied Pilots Assoc. of Los Angeles, Calif., to invoke the services of the National Mediation Board in accordance with Section 2, Ninth, and all other relevant provisions of the Railway Labor Act; and to represent me in all negotiations with the above company involving rates of pay, hours of work, rules and working conditions in accordance with the provisions of the Railway Labor Act. The full power and authority to act for the undersigned, as described herein, supersedes any power or authority heretofore given by me at any time to any person or persons, labor union, organization or corporation to represent me."

Included with the cards were postage-paid return envelopes.

3. Approximately 1,650 authorization cards, as described above, were sent in the fashion described. A small number of additional ballots were forwarded to the various local domiciles for distribution to those pilots who may have mislaid the "card" received by mail or who did not receive one.

4. To date, 1,267 cards have been signed and returned. There are approximately 1,650 pilots on the American Airlines seniority list. Thus, the number of cards we have received to date represents approximately 77% of the total number of pilots on the American Airlines seniority list.

5. On Monday, April 22, 1963, a Ballot Certification Committee was convened in Suite 2804, 205 West 34 Street, New York City. This Committee consisted of Captains C. W. Allen, H. C. Smith and A. W. Young (all of whom are senior pilots in the employ of American Airlines), as well as Mr. George Abrams, representing the *Honest Ballot Association*. All of the ballots received to date were offered to the Committee just described for examination. The Committee, thereupon, selected random samples of the ballots which had been received, all of which were then unopened, and examined the sealed envelopes to determine that they had not been previously opened and that they had not in any way been tampered with. The members of the Committee were given complete liberty to examine those envelopes they chose to select. Upon the completion of their examination, the envelopes were opened by an automatic mail opening machine, provided by the *Honest Ballot Association*, under the continuing observation of the Committee heretofore described. As the envelopes were opened their contents were removed, in the presence of and under the observation of this Committee, and the ballots were tabulated in the presence of this Committee. Upon the completion of the tabulation, the members of the Committee signed the affidavit describing their activities which is attached hereto and made a part hereof as Exhibit "B."

6. Upon the completion of the tabulation on April 22, 1963, American Airlines was informed by me of the fact that the Allied Pilots Association represented a majority of the company's employees in the craft or class of pilots and co-pilots and that Allied Pilots Association demanded recognition as the bargaining representative of this group. In support of this demand, Exhibit "B," the affidavit of the Ballot Certification Committee, was submitted to the Company.

Proceedings Pending Before the National Mediation Board

7. With the ballots that had been tabulated on April 22, 1963 and certain additional ballots which were received the following morning, I left for Washington on April 23, 1963 and on that day I consulted with Mr. Leverett Edwards, Chairman of the National Mediation Board, and Mr. E. C. Thompson, Executive Secretary of the National Mediation Board, concerning the proper procedure for obtaining certification on the basis of the evidence of Allied Pilots Association's overwhelming majority status.

8. A formal meeting was scheduled and held with Messrs. Edwards and Thompson this morning, April 24, 1963, concerning the question of the National Mediation Board's certification of Allied Pilots Association's status as majority representative. During this meeting, at the request of the Board representatives, I submitted, on behalf of Allied Pilots Association, as its Acting President, an Application For Investigation Of Representation Dispute. A copy of this application is attached hereto and made a part hereof as Exhibit "C".

9. Mr. Thompson stated that the National Mediation Board would commence its representation procedures today, in accordance with the Board's standard practices and procedures.

MEC and Negotiation Committee Conclude Negotiating Function

10. The record of these proceedings to date shows that the American Airlines MEC and its Negotiating Committee were, until the recent expression on behalf of Allied Pilots Association, the only bodies directly elected by the pilots and co-pilots to represent them in dealing with the company. In fulfilling this function, these bodies, with which I was associated, endeavored to achieve the objectives sought by the overwhelming majority of the American Airlines pilots. In striving towards this end the pilots, acting through their MEC and the Negotiating Committee, were abandoned by the Air Line Pilots Association on the grounds that there was an alleged difference between the policy of the international organization and the wishes of the American Airlines pilots. The Negotiating Committee, nonetheless, following the desires of the pilots, expressed through the unanimous directives of the MEC, continued negotiations with the company. Now that the pilots have clearly expressed their desire to be represented by another organization, the Allied Pilots Association, this function of the MEC and its Negotiating Committee has been concluded. Any agreement which is signed on behalf of the American Airlines pilots will be executed by their current majority representative, the Allied Pilots Association.

The Pilot-Flight Engineer Agreement for Joint Negotiation

11. This is not the point to review the testimony and evidence which has gone into the record concerning the agreement between the American pilots and flight engineers for the conduct of joint negotiations with the company. Suffice it to say that the pilot Negotiating Committee and the American Airline pilot MEC, as well as I and the other Additional Defendants in this case, all fully understood, through meetings with representatives of the flight engineers and through the very course of negotiations in which they participated, and to which they gave their consent, that negotiations with the company were to be conducted on a joint basis. It was also part of this understanding, expressly and openly stated, that I was to act as spokesman for the joint group; this role was assumed by me only at the specific request of the flight engineer representatives. These joint negotiations were to lead to a single contract embracing all members of the cockpit crew on American Airlines who were to be represented by a single bargaining agent.

12. Despite the fact that the pilot MEC, the Negotiating Committee and I fully complied with our understanding with the flight engineers and did, in fact, spend our time, effort and energies on their behalf, in their presence, and with their approval, during the negotiations, the FEIA American Airlines Chapter chose to commence litigation designed to prevent the consummation of an agreement negotiated in accordance with this understanding. The representatives of the American Airlines pilots stand ready today, as they always have, to honor the understanding with the flight engineer group and go forward with any understandings reached during the process of joint negotiations.

13. Even before the American Airline Pilots had registered their overwhelming support for the Allied Pilots Association, I had made it plain in my testimony to this Court that any such organization did not intend to sign an agreement for American's Flight Engineers as long as the FEIA represented that group. The American Pilots do not desire to have the American Flight Engineers as part of the Allied Pilots Association until such time as they openly and freely, of their own volition, unmistakably indicate their desire to become part of the organization. It follows, and we hereby state that the Allied Pilots Association does not intend to sign any contract covering the Flight Engineers as long as they are represented by the American Chapter-FEIA.

The Action Brought by ALPA Should be Dismissed.

14. Throughout this hearing and briefs, memoranda, affidavits, and statements of counsel, both the ALPA and FEIA have asserted that the single forum for the determination of representation matters is the National Mediation Board. Mr. Weiss said on the first day of hearings that the National Mediation Board is the only agency that has the function, and the exclusive function, of making representation determinations. The services of the National Mediation Board have now been invoked to make just such a determination; it is therefore completely outside the province or jurisdiction of this Court to entertain the questions raised by the Airline Pilots Association in its complaint. Indeed, the Court of Appeals for this circuit reached this same conclusion in *Flight Engineers' International Association* v. *Eastern Airlines*, 52 L. R. R. M. 2153 (2d Cir. 1963).

15. Any question that might possibly have existed as to the representative status of the American MEC and its negotiating committee is now moot and irrelevant to further proceedings in this case. The American Airline Pilots are now represented by a wholly new organization based squarely on the expressed and documented approval of the overwhelming majority of American Airline Pilots. Finally, any conceivable question or problem which might arise concerning the representation rights of this organization will be decided by the National Mediation Board which already has received jurisdiction over this matter. There is, therefore, no basis or purpose for the continuation of the proceedings brought by the ALPA against the Additional Defendants.

The Complaint of the FEIA is Moot.

16. I have already made it plain that the request for authorization cards by the Allied Pilots Association and the application for investigation to the National Mediation Board were exclusively directed to the pilot and co-pilot group on American Airlines; no effort was made to solicit the participation of flight engineers and no statements were made to the NMB concerning the representation of flight engineers. I have stated in this affidavit and will repeat, if necessary, in open Court, the fact that no pilot group with which the Additional Defendants are affiliated, including the Allied Pilots Association, will sign any contract covering the flight engineers so long as that group is represented by the FEIA. As we understand the intervenors' complaint, it stems solely from a fear that certain pilot groups (which are no longer functioning as bargaining representative) will sign agreements covering the flight

engineer group allegedly without the consent of the FEIA-American Chapter and while the FEIA-American Chapter continues to be the flight engineers' bargaining representative. The statements made herein and heretofore should fully set to rest any such fears and do in fact eliminate both the alleged basis of the FEIA's complaint and the grounds for the relief it seeks. Consequently, I urge the Court to dismiss the intervenors' complaint and its motion for injunctive relief on the grounds that the issues involved therein are moot.

Conclusion

I believe I have shown that there are no genuine issues remaining to be litigated in this proceeding. The only effect of prolonging this litigation will be the continued harassment of the parties' defendant. This harassment may well serve the ends of organizations well entrenched and well supplied with the resources for an exhausting court battle. It will not, however, fulfill Congressional mandate as expressed in the R.L.A. or serve the ends of democratic representation of the pilot group on American Airlines through a body which the pilots themselves have created and nurtured through their own resources and efforts voluntarily given

NICHOLAS J. O'CONNELL, JR.

Sworn to before me this
24th day of April, 1963.

Martin Seham
Notary Public, State of New York
No. 31-3584415
Qualified in New York County
Commission Expires March 30, 1965

Exhibit "A" Annexed to Appendix "C"

Authorization for Representation Under the Railway Labor Act

I, the undersigned employee of American Airlines, Inc., classified as *pilot*, now residing at .....,

Home Address *City*

and ....., hereby authorize the

State

Allied Pilots Assoc. of Los Angeles, Calif, to invoke the services of the National Mediation Board in accordance with Section 2, Ninth, and all other relevant provisions of the Railway Labor Act; and to represent me in all negotiations with the above company involving rates of pay, hours of work, rules and working conditions in accordance with the provisions of the Railway Labor Act. The full power and authority to act for the undersigned, as described herein, supersedes any power or authority heretofore given by me at any time to any person or persons, labor union, organization or corporation to represent me.

Signed .....

Print Name .....

Employee #

Date .....

Month day year

Exhibit "B" Annexed to Appendix "C"

The undersigned do hereby state under oath that the following is the procedure which was followed in connection with the opening and counting of ballots received by the Allied Pilots Association to this date. Said ballots are in the form of Authorization To Act cards, prepared in accordance with the provisions of the Railway Labor Act.

At the offices of Martin C. Seham, attorney for Allied Pilots Association, 205 West 34 Street, New York, New York, we were shown a group of 1,152 sealed envelopes addressed to General Post Office, Box 443, New York 1, New York. Each of us examined a representative sampling of said envelopes and determined that they were sealed, had not been previously opened and had not in any way been tampered with. Upon completion of this examination, these envelopes were opened by an automatic mail opener under our continuing observation. We saw that the contents of these envelopes were ballots in the form of Authorization To Act cards and further observed that each of these ballots contained a signature and a date of signing. All such ballots, with the exception of duplicates, were counted in our presence. The total number of such ballots, as described, was 1,110.

C. W. Allen
H. C. Smith
A. W. Young
George Abrams
for The Honest Ballot Association

Sworn to before me this
22nd day of April, 1963.
Martin Seham
Notary Public, State of New York
No. 31-3584415
Qualified in New York County
Commission Expires March 30, 1965

Exhibit "C" Annexed to Appendix "C"

NATIONAL MEDIATION BOARD

APPLICATION FOR INVESTIGATION OF REPRESENTATION DISPUTE

To the NATIONAL MEDIATION BOARD,
Washington, D. C.

A dispute has arisen among the employees of American Airlines, Inc. as to who are the representatives of these employees designated and authorized in accordance with the requirements of the Railway Labor Act. The undersigned, one of the parties to the dispute, hereby requests the National Mediation Board to investigate this dispute, and to certify the name or names of the individuals or organizations authorized to represent the employees involved in accordance with Section 2, Ninth, of the Act.

Parties to dispute:

Petitioning organization or representative—Allied Pilots' Association

Organization holding existing agreement, if any, and date thereof—Air Line Pilots Assn. Intl.

Other organizations or representatives involved in dispute—None

Craft or class of employees involved:

Pilots and Copilots

Number of employees involved—1,600

Number authorizing representation—1,150

Evidence of representation:

The evidence of representation has been forwarded under separate cover and consists of Authorization Cards.

Signed at Washington, D. C. this 24th day of April, 1963.

NICHOLAS J. O'CONNELL, JR.
Acting President